BETTY ALEXANDER

IBLA 80-790 Decided March 9, 1981

Appeal from determination of the New Mexico State Office, Bureau of Land Management, disqualifying simultaneous oil and gas lease offer. NM 40219.

Set aside and remanded.

1. Administrative Procedure: Generally -- Notice: Generally -- Rules of Practice: Generally

   Any document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the post office of the undelivered certified letter, such constructive service being equivalent in legal effect to actual service of the document.

2. Notice: Generally -- Oil and Gas Leases: Generally

   A BLM determination disqualifying a first-drawn oil and gas lease offer for an applicant's failure to furnish additional evidence will be set aside where it appears that in unnecessarily mailing the request to furnish additional evidence "Restricted Delivery," BLM effectively precluded the communication from reaching the applicant.

APPEARANCES: James T. Waring, Esq., Kaufman & Waring, San Diego, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is from a determination by the New Mexico State Office, Bureau of Land Management (BLM), disqualifying appellant's simultaneous oil and gas lease offer NM 40219.

Appellant's drawing entry card for parcel No. NM 421 was drawn number one at the public drawing held at the State Office on February 12, 1980.

When appellant had heard nothing further from BLM by March 11, her husband wrote the State Office, inquiring as to whether he should submit the rental or if there was anything else that should be done in connection with the offer. On March 18, the State office responded as follows: "We are still in the process of adjudicating the Number One Drawee. We mailed out an Additional Evidence [Required] Decision [1/] on March 14, 1980, which you should be receiving shortly." Appellant did not receive the Additional Evidence Required Decision (AER). On May 6, 1980, her husband again wrote the State Office inquiring as to the status of the offer.

By letter dated May 20, BLM advised as follows:

> Receipt is acknowledged of your May 6, 1980, letter concerning lease offer NM 40219.
>
> On March 14, 1980, Additional Evidence Required Decision was mailed to Betty Alexander, 1205 Prospect Street, Suite 545, La Jolla, CA 92037. This address was taken from the entry card. (Copy of entry card enclosed.)
>
> This decision was returned to our office, unclaimed, on April 9, 1980, bearing two notice dates of March 20, 1980 and March 27, 1980. As of April 9, 1980, this offer was considered disqualified and adjudication was begun on the number two drawee.

Appellant refused to accept BLM's determination and submitted rental moneys in hopes of obtaining the lease. The State Office, however, maintained the offer was disqualified and on July 7, 1980, initiated steps to refund the rentals.

On appeal, appellant argues essentially that she received no notice from the State Office to submit additional information and that her offer was therefore improperly disqualified.

1/ The "Additional Evidence Decision" requires an offeror to furnish detailed information as to the circumstances under which he filed his drawing entry card.

BLM's Additional Evidence Required Decision was mailed certified No. 3917 "Restricted Delivery" to appellant's address of record. Rubber stamped on the envelope are two notice dates, March 20 and March 27, 1980 (Thursdays). Appellant offers no explanation why this item of mail may not have reached her, nor does the file disclose details of the attempted delivery by the post office. The United States Postal Service publishes and maintains a looseleaf publication, the Domestic Mail Manual, which sets forth the regulations governing the mail services it offered to the public.

Restricted delivery:

> is a service by which mailer may direct the delivery be made only to the addressee or to an agent of the addressee who has been specifically authorized in writing by the addressee to receive his mail. This service is available only for articles addressed to natural persons specified by name. Restricted delivery may be obtained for mail which is COD, insured for more than $15, registered or certified. Mail marked Restricted Delivery, will be delivered only to the addressee or to his authorized agent.

Domestic Mail Manual (DMM) 933.1.

DMM regulations also require a carrier to leave notice of the certified mail if he cannot deliver the certified letter for any reason. A letter which is not deliverable is to be held at the post office. If not called for within 5 days a second notice is to be issued. If the letter is not called for or redelivery requested, it is to be returned to the sender at the expiration of the period stated by the sender or after 15 days if no period is stated (DMM 912.55). There is no indication in the case before us that these procedures were not followed. As previously observed, the AER was returned to the BLM Office on April 9, 1980.

[1] The question before us is whether appellant had sufficient notice to enable her to file her additional evidence in connection with lease offer NM 40219. We think not.

In the first instance, BLM erred in disqualifying the offer as of April 9, 1980, when the AER was returned to the State Office. In James W. Heyer, 2 IBLA 318 (1971), the Board stated:

> A document which is sent by certified mail to an individual at his record address is considered to have been served at the time of return by the post office of the undelivered, certified letter, such constructive service being equivalent in legal effect to actual service of the document.

This principle is stated also in 43 CFR 4.401(c)(3). See Lite Sabin, 51 IBLA 226 (1980). The AER allows the offeror 30 days from receipt thereof to file the additional evidence. Under the above authorities,

that period began to run on April 9, 1980, and appellant would have had until May 9 to file the information. The State Office, however, did not bother to apprise appellant of its determination of disqualification until May 20 when it responded to appellant's husband's letter of May 6.

[2] We have examined the mailing procedures used by the State Office insofar as those procedures are revealed by this file. The February 12 notification that appellant was the number one drawee was sent apparently by regular mail to appellant's address of record, her husband's place of business. This letter obviously was received. The AER, dispatched on March 14 to appellant at the same address sent certified and restricted delivery was not received. The other letters sent by BLM relative to this offer were addressed to appellant's husband at the same address and forwarded by regular mail or certified and restricted delivery. Appellant's husband received all the mail addressed to him.

A regulation pertinent to this appeal is 43 CFR 1810.2(b), which provides:

> (b) Where the authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication under the regulations of this chapter, that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. An offer of delivery which cannot be consummated at such last address of record because the addressee had moved therefrom without leaving a forwarding address or because delivery was refused or because no such address exists will meet the requirements of this section where the attempt to deliver is substantiated by post office authorities.

None of the three circumstances listed in the regulation are present in the case before us. Since the AER was mailed restricted delivery, several factors might account for nondelivery. It is possible that appellant was not at her address of record, that her husband was not her agent, and/or that neither of the two was aware of the attempted delivery. Whatever the obstacles might have been, the fact that the Bureau's earlier communication reached the addressee unhindered, suggests not only that there was no necessity to use the vehicle of restricted delivery but also that its use was arbitrary and without any apparent pragmatic justification. See Lite Sabin, supra at 229. 2/

2/ See also 43 CFR 1821.2-4, "Use of certified mail." The reference in the regulation to 39 CFR Part 58 is obsolete. The present Postal Service regulation is found at 39 CFR 111.4, which incorporates by reference material found in the Domestic Mail Manual (DMM). As noted in the text hereof, DMM Part 912 describes certified mail, while DMM Part 933 describes restricted delivery mail.

We conclude that in using restricted delivery for the AER, the State Office neglected the intent and purpose of the above regulation which requires only that a communication be mailed to a "last address of record" not the addressee herself. Consequently, the object of the regulation -- communication by mail reasonably certain to provide notice to an applicant -- was defeated. We conclude that appellant did not receive proper notice, and that the cause thereof must be ascribed to the State Office. Accordingly, it was error to disqualify appellant's offer.

Therefore, pursuant to the authority delegated to the Board of the Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded to BLM.

Gail M. Frazier
Administrative Judge

I concur:

James L. Burski
Administrative Judge

ADMINISTRATIVE JUDGE STUEBING CONCURRING:

While in agreement with the majority that the use of "restricted delivery" mail in this instance by the New Mexico State Office, BLM, was unwarranted, my perusal of the record raises another basis for concern about the propriety of issuing this lease to appellant. The file contains a copy of a letter dated February 18, 1980, from California Resources, Inc., of Encinitas, California, to Betty Alexander. The letter is captioned "Lease Acquisition Notice," and the first sentence states, "We are pleased to announce that you have been recently awarded a lease in the Federal Simultaneous Oil and Gas Lease Lottery." Several paragraphs of information and instructions follow, and the letter concludes: "We will attempt to arrange to have this lease sold as soon as possible and will naturally notify you of all pending situations. If you should have any questions or comments, please do not hesitate to contact us. Again, congratulations on your good fortune."

This letter stands as prima facie evidence that appellant had some prearrangement with California Resources, Inc., whereby that company had a right to sell the lease, if appellant's offer was successful. Appellant had indicated on her drawing entry card that she was the sole party in interest in the offer and the lease, if issued. We have repeatedly held that contracts which authorize a person or corporation to act as the agent of the offeror to attempt to dispose of the lease, if issued, for a share of the proceeds amounts to an "interest" which must be disclosed pursuant to 43 CFR 3100.0-5. See, e.g., Frederick W. Lowey, 40 IBLA 381 (1979).

The letter does not offer appellant any alternative. There is no reference to a need on the part of appellant to execute any new agreement in order to invest California Resources, Inc., with the requisite authority to proceed on her behalf to "have this lease sold as soon as possible." Thus, the presumption arises that such authority had already been contractually established. Moreover, it appears that even before California Resources, Inc. wrote on February 18, 1980, to inform appellant that she had been "awarded a lease," it had already initiated its efforts to dispose of it for her. On that same date, February 19, 1980, Robert E. Eckels, of Golden, Colorado, also wrote to appellant, indicating that his firm was "contacting a number of potentially interested companies, and we will negotiate toward most favorable terms as a next step." The next two paragraphs of the letter read as follows:

> It is our understanding that you have been advised by California Resources, Inc. that our fee will be ten percent of consideration received where we are instrumental in negotaiting [sic] a conveyance for you.
>
> It is possible you will receive some inquiries. If so, please let us, and California Resources, Inc., know so as to be included in our negotiations.

Although elsewhere in this letter are clauses indicating that Eckels was proceeding "with your permission" and "unless advised otherwise," these expressions do not indicate the source or nature of Eckel's authority to act on appellant's behalf, nor do they contribute anything to our understanding of the relationship between appellant and California Resources, Inc.

Therefore, before this lease issues to appellant, a determination must be made by BLM that appellant had not created any interest in her offer and the lease if issued through her contractual relationships with California Resources, Inc., Robert E. Eckels, or any other entity. See Lee S. Bielski, 39 IBLA 211, 86 I.D. 80 (1979).

Edward W. Stuebing
Administrative Judge